

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID THOMAS, JR.,

Petitioner,

v.

RICK THALER,

Respondent.

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CIVIL ACTION NO. H-11-3666

ORDER OF DISMISSAL

State inmate David Thomas, Jr., filed a *pro se* section 2254 habeas petition challenging his state conviction. The Court ordered respondent to file an answer or dispositive motion, and ordered petitioner to file a response to any motion for summary judgment within thirty days after service of the motion. On March 1, 2012, respondent filed a motion for summary judgment raising expiration of limitations, and served a copy on petitioner at his address of record. (Docket Entry No. 13.) To-date, and despite expiration of a reasonable period of time in excess of fifty days, petitioner has failed to file, or request additional time to file, a response to the motion for summary judgment.


The Court finds that petitioner has failed to comply with the Court's order to respond to the motion for summary judgment. The Court further finds that petitioner's failure to respond to the motion reflects his lack of due diligence in prosecuting his case. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal for want of prosecution based

on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is DISMISSED WITHOUT PREJUDICE for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Any and all pending motions are DENIED AS MOOT. A certificate of appealability is DENIED. Petitioner may move to reinstate this case by filing, within fifteen days from date of this dismissal, his response to the motion for summary judgment with a motion for new trial setting forth good cause for his failure to comply with the Court's prior order.

The Clerk will provide copies of this order to the parties.

Signed at Houston, Texas on April 30, 2012.



Gray H. Miller
United States District Judge -